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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/530,060	07/06/2000	KAZUAKI OHKUBO	YAO-4321US	7496

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EXAMINER

SHAY, DAVID M

ART UNIT PAPER NUMBER

3739

DATE MAILED: 06/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

87/530,060

Applicant(s)

O. Schubert et al

Examiner

J. S. H.

Group Art Unit

3737

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on March 26, 2004
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1, 32, 33, 35-37, 39, 42, 46, 50, 56-58 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1, 32, 33, 35-37, 39, 42, 46, 50, 56-58 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____
 - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 32, 33, 36, 37, 39, 42, 46, 50, 56 and 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hughes in combination with Yano et al. Hughes teaches a device as claimed except the specific chromaticity. Yano et al teach the desirability maintaining the chromaticity in the desired range. It would have been obvious to the artisan of ordinary skill to employ the chromaticity of Yano et al in the lamp of Hughes, since this yields a truer rendition of colors of objects, as taught by Yano et al or to employ the lamp of Yano et al in the device of Hughes, since Hughes teaches that a variety of lamps can be employed, thus producing a device such as claimed.

Claims 35 and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hughes in combination with Yano et al as applied to claims 1, 32, 33, 36, 37, 39, 42, 46, 50, 56 and 58 are above, and further in view of Tsutomiu. Tsutomiu teaches that autoimmune system stimulation is increased when the applied light is pulse modulated at 0.5 to 13Hz. It would have been obvious to the artisan of ordinary skill to modulate the light of Hughes at 0.5 to 13Hz, since this will enhance immune system performance as taught by Tsutomiu, thus producing a device such as claimed.

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Applicant's arguments with respect to claims 1, 32, 33, 35-37, 39, 42, 46, 50, and 56-58 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication should be directed to David Shay at telephone number 308-2215.

A handwritten signature in black ink, appearing to read 'David M. Shay', enclosed within a large, stylized oval flourish.

Shay/DI

June 4, 2004

**DAVID M. SHAY
PRIMARY EXAMINER
GROUP 330**